

(2006) 02 CAL CK 0015
In the Calcutta High Court
Case No : C.R.R. No. 2753 of 2005

Mahabir Prasad Gupta and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 207, 482, 91
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2006) 4 CHN 399

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Ranjan Roy, for CBI, S.S. Roy and Suranjan Mondal, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Talukdar, J.—The present case arises out of an application u/s 482 of the Criminal Procedure Code, 1973.

2. It is directed against order dated 19th July, 2005 passed by Smt. Sashi Kala Basu, Additional Sessions Judge, 6th Fast Track Court, Bichar Bhavan, Calcutta in C.R. No. 121 of 2004 affirming the order dated 22.03.2004 passed by learned 12th Court of Metropolitan Magistrate, Calcutta in G. R. Case No. 590 of 2002. A petition was filed in connection with the said C. R. case on 06.01.2003 u/s 91 of the Code of Criminal Procedure praying for issuance of summons upon the Superintendent of Police, CBI, ACB, Kolkata and directing him to produce the affidavit sworn by Arshad Pervez in connection with Case No. R.C.-5/98 dated 12.01.1998 u/s 120B/ 420/468/471 of Indian Penal Code.

3. Grievances of the petitioners may briefly be stated as follows:

Central Bureau of Investigation registered a case being No. R. C.-5/98 dated 12.01.1998 against M/s. Merit Pharmaceuticals Limited alleging that the company had obtained fraudulent claims of loss of medicines in transit from

National Insurance Company Limited. After completion of investigation, chargesheet was submitted against four (4) persons including the two petitioners. The petitioners were entrusted with the carriage of medical consignment by M/s. Merit Pharmaceuticals Limited. The goods were despatched by hired lorry and it was reported by the Branch Manager of the petitioners concerned in Patna that some theft and loss of goods had taken place at Barhaiya Police Station near Patna. One Arshad Pervez was the driver of the vehicle. On the basis of the relevant materials the learned Court took cognizance. It could be found that the said Arshad Pervez was examined during investigation and his statement was recorded u/s 161 of the Criminal Procedure Code. The statement made by him on 22.12.1992 was amongst the list of documents annexed to the chargesheet and relied upon by the prosecution.

4. Item No. 10 in the list of documents includes this declaration as annexure No. 54. This document No. 90 along with the letter No. 34/03/05(A)/18-Calcutta dated 14.12.1998 addressed by the SP, CBI, to GEQD was supplied but the annexures which included the declaration of Arshad Pervez was kept away. Specimen signature of the said witness, Arshad Pervez, was sent to GEQD along with the declaration made by him to verify the genuineness of the signature in the declaration. Handwriting expert examined the document and gave his opinion vide letter No. DXC 154/98/1061 dated 29.04.1999. It was positive opinion regarding the authenticity of signature appearing for the declaration. This declaration is named amongst the documents relied upon by the prosecution but the copy of the said document was not supplied at the time of supply of copies to the accused persons/petitioners. A petition dated 25.03.2005 was filed u/s 91 of the Criminal Procedure Code seeking production of the said document but petition was rejected by order dated 22.03.2004.

5. Being aggrieved by such order dated 22nd March, 2004, a revisional application was filed being C.R. No. 121 of 2004 and the learned Court of Revision by the impugned order dated 19.07.2005 rejected the said revisional application thereby affirming the order of the learned Court of Magistrate.

6. Referring to such backdrop, it was submitted by learned Counsel Mr. S.S. Roy appearing for the petitioner that the learned Courts below failed to appreciate the matter in the proper perspective. Mr. Roy submitted that the petitioners, as accused persons, are certainly entitled to get copies of all materials and documents which are seized and sought to be relied upon by the prosecution. He submitted that there is no dispute as to the seizure of the document in question as it had been duly mentioned but prosecution cannot be permitted to deprive the petitioners/accused persons of the benefit of such document. In this context, Mr. Roy submitted that it is the duty on the part of the Court to ensure supply of copies of all the documents and materials which are sought to be relied upon. According to Mr. Roy, Section 91 of the Criminal Procedure Code gives the petitioners a right and imposes a duty on the part of the learned Court to ensure supply of entire documents and materials seized by the prosecution.

7. Attention of the Court was drawn to the copies of various correspondences and the list of documents which had been annexed to the instant application. There is mention of "declaration of Arshad Pervez on stamp paper of Rs. 10/- marked and encircled in red pencil vide Q-91" as against Item No. 54 of such list of questioned documents. In fact, there is no scope for any dispute as to the factual backdrop of the present case. There is further mention of "Specimen handwriting & signatures etc. of Shri Arshad Pervez -- marked and encircled in blue pencil vide Nos. S-342 to S-346" as Item No. 8 of the specimen handwriting.

8. The controversy is as to how far the present petitioners/accused persons can claim to get copies of such documents and that too, by making a prayer before the learned Court for production of such documents u/s 91 of the Code of Criminal Procedure.

9. Learned Counsel. Mr. S.S. Roy, appearing for the petitioners, referred to the decision in the case of Satish Mehra Vs. Delhi Administration and Another, , in support of his contention that the Court is not debarred from looking into any material produced by the accused at the stage of consideration of charge and hearing of accused is not confined to oral arguments. It was submitted that if the accused succeeds in producing any reliable material at the stage of consideration of charge which fatally affects the sustainability of the case, it is unjust to suggest that no such material can be looked into. Borrowing words from the said judgment of the Apex Court it was contended that "when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date."

10. Section 91(1) of the Criminal Procedure Code reads as under :

91. Summons to produce document or other thing. -- (1) Whenever any Court or any Officer-in-Charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

11. It is now a question of ascertaining the extent of necessity or desirability with reference to the stage of the case. Apex Court in its decision in the case of State of Orissa v. Debendra Nath Padhi, reported in 2005 SCC 415, observed that "if any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage."

12. In fact, the earlier decision in the case of Satish Mehra Vs. Delhi Administration and Another, was also taken into consideration by the Apex Court while making such observation.

13. On behalf of the opposite party/CBI, it was categorically submitted that at the time of framing of charge, the Court can consider only the police report referred to in Section 173 of the Cr. PC and the documents sent therewith. In the case of State Anti-Corruption Bureau, Hyderabad and Anr. v. P. Suryaprakasam, reported in 1999 SCC 373, it was held that the only right the accused has at that stage is of being heard and nothing beyond that. It was, however, made clear that at that stage the accused may be examined but that is a prerogative of the Court only. The fact that the legal position in this regard underwent radical change subsequently is or can be of no consequence at all.

14. Relying upon the decision in the case of S.M.S. Pharmaceutical Ltd. v. Neeta Bhalla and Anr., reported in 2005 SCC 1975, it was submitted by Mr. Ranjan Roy, Id. Counsel on behalf of the OP/CBI that the accused cannot have any right to produce any documents or evidence in defence at the stage of issuance of process or at the stage of framing of charge.

15. In the present case, as submitted on behalf of the petitioners, the document referred to earlier was purposely withheld even after its seizure by the prosecution on the ground that it could go to significant extent to expose the hollowness of the prosecution allegations. Even assuming this to be true, the fact remains that the prosecution does not intend to rely upon such a document and, as such, is not liable to serve a copy of the same in compliance with Section 207 of Criminal Procedure Code. But, existence of such a document being now clear before the Court as also its nature and genuineness. Defence will certainly be at liberty to derive strength from such a document at an appropriate stage. No doubt, it is the duty of the Court to make all possible endeavour so as to unveil the mystery and explore the truth. But, this job is also to be done in prescribed manner and the Court cannot favourably respond to a claim made by the accused persons merely with the expectation that such claim could result in demolition of the entire prosecution case.

16. Considering all these aspects and having regard to the aforesaid discussion, I am inclined to hold that the orders under challenge do not suffer from any infirmity and, as such, the same do not justify any interference. It cannot be said that such orders, h not set aside, will amount to abuse of the process of Court.

17. So the case fails.

18. As such, the case being C.R.R. No. 2753 of 2005 be dismissed. Interim order, if any, stands vacated. Send copy of the order to the learned Trial Court for information and necessary action.

19. Learned Trial Court is further directed to expedite the trial of the case, as it is already a fairly long drawn out one.

20. Send the LCR, if any at all, back to the learned respective Courts immediately.

21. Department is directed to supply xerox certified copy of this order, if applied for, to the learned Counsel of the parties as expeditiously as possible.